THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 8974 of 2006

04-09-2006

Between:-

Sri Mukund Kulkarni

Petitioner

And

The Government of Andhra Pradesh, Endowment Department, Secretariat Building, Hyderabad rep., by its Secretary and two others.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 8974 of 2006

Oral order:

The petitioner claims that his father was a tenant of the premises in Door No.11-5-342 Red Hills, Hyderabad, a property belonging to Sri Venugopala Krishna Mandir, Red Hills, Hyderabad, a religious institution governed by the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act') since 1967 at which time the relevant enactment was the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (for short '1966 Act'). The affidavit filed by the petitioner is wholly silent as to how a lease was granted, whether by public auction, private negotiation or by a one to one parley between the Manager or the Assistant or Deputy

Commissioner of Endowments and the petitioner's father. The affidavit also fails to plead whether a lease deed was at all executed and the tenure fixed for the lease. The petitioner however asserts that the rent was initially Rs.30-00 per month and later was enhanced to Rs.100-00 per month. Nothing is stated as to whether the enhancement was by an oral agreement or a written instrument.

O.A.No.32 of 1993 is a proceeding *suo motu* initiated by the Deputy Commissioner, Endowments Department, Hyderabad under Section 83 of the Act, for determination of the petitioner as an encroacher and for taking steps for his eviction. By an order dated 09-11-2002, O.A.No. 32 of 1993 was disposed of declaring the petitioner an encroacher and directing him to vacate the premises within fifteen (15) days from the date of receipt of the said order and to handover vacant physical possession of the premises to the Executive Officer/Person-in-Management of the temple, failing which action is to be initiated under Section 84 of the Act.

Aggrieved by the order, the petitioner preferred a revision, R.P.No. 81 of 2002 before the 3rd respondent. By the order dated 20-05-2005, the 3rd respondent dismissed the revision preferred under Section 92 of the Act. The petitioner alleges that thereupon he preferred a revision to the 1st respondent under Section 121 of the

Act, on 18-08-2005. According to the learned counsel for the petitioner, the Hon'ble Minister concerned scheduled the hearing of the revision petition on 21-08-2005 and thereafter on 26-08-2005 and then adjourned it to 31-08-2005. On the last of the dates, there were indications that a fair rent of Rs.1500-00 per month would be fixed. However, according to the petitioner the 1st respondent advised the petitioner's counsel to prefer an appeal despite the learned counsel informing the 1st respondent that no revision would lie to the 2nd respondent, as the 3rd respondent had passed orders dismissing the revision exercising the jurisdiction under Section 92 of the Act and from such an order, no revision would lie to the Commissioner of Endowments. However, following the advice of the 1st respondent, the petitioner claims to have preferred a revision to the 2nd respondent on 12-09-2005 seeking a revision or a review of the order of the 3rd respondent dated 20-05-2005 in R.P.No. 81 of 2002. Along with the revision petition to the 2nd respondent, the petitioner sought stay of the order of the Deputy Commissioner dated 09-11-2002 declaring the petitioner as an encroacher and directing his eviction. The petitioner's grievance is that the 2nd respondent has not disposed of the revision dated 12-09-2005 as yet. This is

the grievance presented by this writ petition.

The learned Government Pleader for Endowments appearing for the respondents states that the Commissioner has no jurisdiction under Section 92 of the Act to entertain a revision against an order of the Regional Joint Commissioner of Endowments exercising the revisional jurisdiction under Section 92 of the Act (against an order of the Deputy Commissioner exercised under Section 83 of the Act declaring a person to be an 'encroacher' on the property of a religious institution).

In any view of the matter, the 2nd respondent to whom the petitioner preferred a revision is required to exercise jurisdiction and dispose of the revision. If no such revision is maintainable under the statutory provisions, the 2nd respondent is obligated to pass an order to that effect and return the revision for presentation before the appropriate authority. Silence is however not an option. Before parting with the case, some observations in the order dated 09-11-2002 of the Deputy Commissioner, Endowments, Hyderabad need be noticed: "*There is no lease approved by the competent authority in favour of the respondent No.2 to remain in possession*," held the Deputy Commissioner. Grant of lease of endowment properties is not in exercise of a whim and pleasure of endowment officials. Endowment

Officers not regulators of the properties of endowment or religious institutions as in the manner of executive officers of the Government dealing with the Government lands. The role of the Government in respect of properties of religious institutions is pursuant to the State's obligation to ensure good governance of the material wealth of endowment institutions and to supervise proper management of the assets of religious institutions. There is a long line of precedential authority and public law principles that ordain that endowment properties may be transferred whether by way of lease or otherwise, only after a public and transparent process and preferably by way of a public auction. The relevant statutory rules whether under the earlier 1966 Act or the current Act, 1987 rigorously regulate the power. Normally leases may be granted only after a public auction and by entering into a written agreement of lease for a specific duration and only after approval of the lease by the competent authority. Any possession by a person contrary to the prescribed procedure, would not amount to a lease that may be recognized by any officer of the endowment department, an Assistant Commissioner, a Deputy Commissioner, Regional Joint Commissioner or a Commissioner of Endowments department or even by the State Government as a lease. The plenitude of statutory or administrative discretion of the State Government does

not extend to transgression of the statutory procedure and statutory discipline ordained by the provisions of the Act. No officer of the Government even in purported exercise of a quasi judicial power of revision, cannot recognize an illegal parting of endowment property as a legal lease.

Despite the Deputy Commissioner of Endowments having recorded in O.A.No.32 of 1993 in clear and unambiguous terms that there is no lawfully drawn up lease in favour of the petitioner and despite the revision thereagainst having been rejected by the 3rd respondent on 20-05-2005 (R.P.No. 81 of 2002), the possession by the petitioner is stated to have continued (the possession was obtained by the respondents from the petitioner only on 30-08-2006 long after the first anniversary of the revisional order of the 3rd respondent dated 20-05-2005 in R.P.No. 81 of 2002) though there was no interlocutory order in favour of the petitioner either by the State Government or by the 2nd respondent. This is an aspect that the 2nd respondent must inquire into and fix responsibility against the concerned officer who has failed to safeguard the properties of the endowment and who has failed to execute a quasi judicial order of the Deputy Commissioner of Endowments under Section 83 of the Act declaring the petitioner an 'encroacher' and directing his eviction. The quasi judicial determination by the

Deputy Commissioner of Endowment is binding on all authorities including the State Government, the Commissioner of Endowments or any other authority, unless interdicted in an appropriate exercise of jurisdiction in a revision, appeal or otherwise. The determination by the Deputy Commissioner under Section 83 of the Act that a person is an encroacher and directing his eviction is binding even on the State Government and cannot be interfered with, unless the State Government exercises quasi judicial jurisdiction, if there be one available. Any authority of the endowments department failing to execute an order of a Deputy Commissioner under Section 83 of the Act would be liable for disciplinary action. This is an aspect that the 2nd respondent is directed to look into.

On the analysis above, the 2nd respondent is directed to pass an order on the revision/review preferred by the petitioner on 12-09-2005 against the order of the 3rd respondent dated 20-05-2005 in R.P.No. 81 of 2002, expeditiously and in any event within a period of three days from the date of receipt of a copy of this order. The 2nd respondent shall communicate to the petitioner the decision on the revision preferred by him within the aforesaid time, by registered post acknowledgement due. If the 2nd respondent is satisfied that no revisional remedy lies against an order of the 3rd respondent dismissing

R.P.No. 81 of 2002, the 2nd respondent shall record accordingly, but shall pass an order. The 2nd respondent shall also administratively look into the failure of the departmental officers in executing the order of the Deputy Commissioner dated 09-11-2002 in O.A.No. 32 of 1993 as confirmed by the 3rd respondent's order dated 20-05-2005 in R.P.No. 81 of 2002.

The writ petition is disposed of as above. There shall be no order as to costs.

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GODA RAGHURAM, J

Dated:04-09-2006
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